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Supreme Court, U.S.
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No. 94 - 255

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

JEAN COLLINS, an individual and
TERRY COLLINS, her husband,

Petitioners,

vs.

GREENE COUNTY MEMORIAL HOSPITAL, a corporation; and ARUNAVA DAS, M.D., an individual,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Pennsylvania

PETITIONERS' REPLY BRIEF TO RESPONDENT, GREENE COUNTY MEMORIAL HOSPITAL'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Together with the questions already presented to the Court the following question is added which is presented in response to Respondent's Brief in opposition;

> Whether this Honorable Court has jurisdiction to review this action and whether a federal question was presented and/or passed upon in the Courts of Pennsylvania?

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OPINIONS BELOW

The Pennsylvania Supreme, Per Curium Order and dissenting Opinion, is reported at 640 A.2d 379, ___ Pa. ___ (1994). The Pennsylvania Superior Court Opinion, is reported at 419 Pa.Super. 519, 615 A.2d 760 (1992). The written opinion of the Court of Common Pleas of Greene County, Pennsylvania is unreported, (all opinions below can be found in the appendix to the Petition for Writ of Certiorari at A-2 through A-26).

STATEMENT OF JURISDICTION

This court has jurisdiction pursuant to 28 U.S.C. § 1257. Federal questions were presented and passed upon in the courts of Pennsylvania including Pennsylvania's highest court. The federal questions are as follows; whether a state

court can ignore a state statute; whether a court can change a state statute by adding a word; whether the word "prompt" is vague for statutory construction; and whether a court can retroactively apply an undefined court changed statute, (see, the contents of this Reply Brief's arguments below for the argument that the federal questions have been presented and/or passed upon).

The Pennsylvania Supreme Court denied Rehearing on May 11,1994, (Appendix to Petition for Writ of Certiorari at A- 1). The Petition for Writ of Certiorari was filed within ninety days of that date, on Aug[illegible] 8, 1994 which satisfies Supreme Court Rule 13.4.

U.S. CONSTITUTIONAL PROVISIONS INVOLVED

A. Due Process Rights

The Fifth and Fourteenth Amendments to the Constitution of the United States; (The pertinent parts of these amendments can be found on pages 3-4 of the Petition for Writ of Certiorari).

B. Right to Trial by Jury

The Seventh Amendment to the Constitution of the United States;(the provisions of this amendment can be found at page 4 of the Petition for Writ of Certiorari).

CONCISE STATEMENT OF THE CASE

Petitioners' original Statement of the Case can be found at pages four through six of the Petition for Writ of Certiorari. For the purposes of this Reply Brief the following is included. The Respondent, Greene County Memorial Hospital states three reasons in its Respondent's Brief in Opposition for Denying the Writ: 1) that this case presents no substantial Federal question; 2) that the Federal questions raised in the Writ of Certiorari were not "pressed or passed upon" by the Pennsylvania courts; and 3) that the decisions

by the Pennsylvania Superior and Supreme Courts were proper and do not justify review by this Court. All three of the Respondents' reasons are erroneous assertions. For the reasons stated below and in the Petition for Writ of Certiorari this Honorable Court should grant Writ of Certiorari in this case.

I.
THE CASE DOES PRESENT SUBSTANTIAL FEDERAL QUESTIONS

A. The Petitioners do have a Seventh Amendment Right to trial by jury.

In the Respondent's Brief in Opposition. The Respondent mistakenly asserts that the Petitioners do not have a Seventh Amendment Right to Trial by Jury. The Respondent bases this assertion on the Unites State Supreme Court ruling that the Seventh Amendment does not apply to a proceeding commenced in state court, Minneapolis and St. louis R.R. Co. v. Bombolis, 241 U.S. 211 (1916). What the Respondent fails to realize is that the Pennsylvania State Transfer Statute, 42 Pa.C.S.A. § 5103(b), provides that "[T]he pleadings [transferred from federal to state court] shall have the same effect as under the practice in the United States Court, . . . ", (the full text of 42 Pa.C.S.A. § 5103 is printed on pages seven through nine of the Writ of Certiorari). The Petitioners asserted their Seventh Amendment Right to Trial by Jury in federal court before the transfer by demanding a trial by jury, (see Appendix A-1, of this Reply Brief). Therefore, the Petitioners' right to trial by jury has been preserved and the Legislature of Pennsylvania has maintained that right by way of the Pennsylvania Transfer Statute. Furthermore, although there is a dearth of case law on the matter. The Supremacy clause of the United States Constitution should require that all cases correctly commenced in a court of the United States and then, through judicial discretion, transferred to a state court, be controlled by the rights preserved by the United States Constitution because at least one of the parties invoked their right to trial

by jury in federal court. It should be remembered that the U.S. District Court for the Western District of Pennsylvania still has jurisdiction over this case regarding the Title VII claim. The District Court ordered the Respondent Hospital to implement programs to eliminate sexual harassment in the work place. If Respondent, Greene County Memorial Hospital, fails to adhere to that order. The District court can hold the Respondent Hospital in contempt.

Clearly when a state legislature provides that "[T]he pleadings [transferred from federal to state court] shall have the same effect as under the practice in the United States Court, . . . ", (see, 42 Pa.C.S.A. § 5103(b)), and those federal pleadings include a timely demand for trial by jury, the Seventh Amendment applies to the state proceeding which originated in federal court.

B. The Petitioners have not imprudently turned a state law into a constitutional issue

The actions by the Courts of Pennsylvania have violated the United States Constitution of the United States as stated in the Writ of Certiorari. The Petitioners have not turned a state issue into a federal issue as claimed by the Respondent, Greene County Memorial Hospital. It is the state courts of Pennsylvania that have made a constitutional issue out of this case by ignoring one Pennsylvania statute and changing another and in doing so depriving the Petitioners of their day in court. The beneficiaries of the constitutional deprivations have been the Respondents. That is why the Respondent, Green County Memorial Hospital is so vehemently contesting the Writ of Certiorari.

The issue of this case is not whether the courts of Pennsylvania have properly interpreted a Pennsylvania Statute as claimed by the Respondent, Hospital. The issues are; 1) whether a court can change a statue promulgated by a state legislature; 2) whether a court can ignore a statute promulgated by a state legislature; 3) whether the word "promptly" is vague for statutory construction; and 4) whether a court can rule that just under seven months is not "prompt" when there was no previous definition of "prompt"

in regards to a transfer. As stated in the Petition for Writ of Certiorari the courts of Pennsylvania have violated the Petitioners' constitutional rights.

In this case, Supreme Court of Pennsylvania Justice Papadakos, in a dissenting opinion, brought to the forefront the issue as to whether the term "prompt" is constitutionally vague, see, Collins v. Greene County Memorial Hospital, ___ Pa. ___ 640 A.2d 379, 379-380 (1994),(A-4, to the Appendix for the Petition for Writ of Certiorari):

> "Unfortunately, neither the Superior Court's opinion nor this Court's per curiam order offer any definitive guidance on the question of what constitutes a "prompt" transfer of an action pursuant to 42 Pa.C.S.A. § 5103 from a federal forum to a state on other than the Superior Court's analogy to the rules developed regarding a writ of summons or complaint which is not served within thirty days.
>
> . . .
>
> However, I do not read the Superior Court's opinion to be imposing a presumption that the transferred action is "dead" on the thirty-first day, as we have concluded with unserved writs of summon or complaints."

Clearly the actions by the Courts of Pennsylvania as stated in the Writ for Certiorari are repugnant to the United States Constitution.

II.
FEDERAL QUESTIONS WERE PRESENTED AND CONSIDERED BY THE HIGHEST COURT OF PENNSYLVANIA IN THIS CASE

As stated in People of the State of New York v. Zimmerman, 49 S.Ct. 61, 63 278 U.S. 63:

> "There are various ways in which the validity of a state statute may be drawn in question on the ground

> that it is repugnant to the Constitution of the United States. No particular form of words or phrases is essential,but only that the claim of invalidity and the ground therefor be brought to the attention of the state court with fair precision and in due time. And if the record as a whole shows either expressly or by clear intendment that this was done, the claim is to be regarded as adequately presented."

The Petitioner raised the questions of the constitutionality of 42 Pa.C.S.A. §5103 as changed by the courts of Pennsylvania and the courts' failure adhere to a statutes promulgated by the legislature of Pennsylvania, 42 Pa.C.S.A. § 5535 read in conjunction with 42 Pa.C.S.A. §5103:

1) Argument II of the Petitioners' Superior Court of Pennsylvania Brief, (see, page 2 of the Appendix to his Reply Brief);

"BECAUSE A COURT HAS NO POWER TO INSERT A WORD INTO A STATUTORY PROVISION WHERE THE LEGISLATURE HAS FAILED TO SUPPLY IT, IT WAS ERROR FOR THE TRIAL COURT TO READ THE WORD "PROMPT" INTO 42 PA. C.S.A. §5103(b)"

2) Argument II of the Petitioners' Supreme Court of Pennsylvania Brief, (see, page 2 of the Appendix to his Reply Brief);

"BECAUSE A COURT HAS NO POWER TO INSERT A WORD INTO A STATUTORY PROVISION WHERE THE LEGISLATURE HAS FAILED TO SUPPLY IT, IT WAS ERROR FOR THE TRIAL COURT TO READ THE WORD "PROMPT" INTO 42 PA. C.S.A. §5103(b) AND FOR THE SUPERIOR COURT TO AFFIRM THE TRIAL COURT DISMISSAL OF THE APPELLANTS CLAIM"

3) Summary of the Argument, Petitioners' Pennsylvania Superior Court Brief, (quoted at page 8a,

Appendix A, Respondent's Brief in Opposition); and Summary of the Argument, Petitioners' Pennsylvania Supreme Petition for Allowance of Appeal (quoted at page 19a, Appendix B, Respondent's Brief in Opposition);

> "It is a fundamental precept of statutory construction that a court cannot insert a word into a statute where the legislature has failed to supply it."

4) Summary of the Argument, Petitioners' Pennsylvania Supreme Court Brief, (quoted at page 26a, Appendix C, Respondent's Brief in Opposition);

> "6. The word "prompt" appears nowhere in §5103 nor can it be reasonably implied. Thus, because it is reversible error for a court to insert a word into a statute where the Legislature has not done so, it is incumbent upon the Court to reverse the courts below and allow Appellants to prosecute their claim."
>
> "7. . . . The failure of the Superior Court to provide a grace period to comply with the new promptness requirement was violate of due process and, thus, is reversible error.";

5) Argument II, Petitioners' Reply Brief in the Pennsylvania Supreme Court, (see, Appendix C, page 3, of this Reply Brief);

> " . . . Appellants had one year within which to affect a transfer pursuant to the terms of 42 Pa.C.S.A. §5103(b)(2) and §5535(a).";

6) Petitioners' Application for Reargument in the Pennsylvania Supreme Court, (see, Appendix C, page 3, of this Reply Brief);

> "2. The Court's opinion refers to the word "prompt" and affirms the lower Court's opinion

setting forth this word as part of the statutes involved in this case. The word does not appear in any of the statutes."

"3. The Court, due to press of business, apparently did not have the opportunity to read the statutes involved. These statutes clearly sustain the Petitioners' position, that they had one year to file their action following dismissal from Federal Court.;

7) The dissenting opinion of Pennsylvania Supreme Court Justice Papadakos, clearly addresses the fact the word "prompt" is vague and that the issue was before the highest court of Pennsylvania as evidenced by the following passage of his opinion, Collins, Supra at 379-380, (see, A-4, to the Appendix to the Petitioners' Writ for Certiorari);

"Unfortunately, neither the Superior Court's opinion nor this Court's per curiam order offer any definitive guidance on the question of what constitutes a "prompt" transfer of an action pursuant to 42 Pa.C.S.A. § 5103 from a federal forum to a state on other than the Superior Court's analogy to the rules developed regarding a writ of summons or complaint which is not served within thirty days.

. . .

However, I do not read the Superior Court's opinion to be imposing a presumption that the transferred action is "dead" on the thirty-first day, as we have concluded with unserved writs of summon or complaints."

Clearly the arguments by the Petitioners to the Courts of Pennsylvania raised the issue that a court's inclusion of the word "prompt" in a statue in repugnant to the United States Constitution. **In fact, the Supreme Court of Pennsylvania, the highest court of Pennsylvania, in a dissenting opinion, by Justice Papadakos, brought out the fact that the word "prompt" has not been defined, thereby bringing to the**

forefront the constitutional issue of vagueness. Clearly Pennsylvania Supreme Court Justice Papadakos understood that a constitutional argument was being raised by the Petitioners and in fact agreed with the Petitioners, that the term "prompt", without a defined length of time, ". . . does a disservice to the bar and these litigants", Collins, Supra. at 380, (i.e., is repugnant to the United States Constitution) and therefore dissented.

There can be no question as to the proper presentation of a federal claim when the highest state court passes on the issue, see, Raley v. Ohio, 360 U.S. 423, 3 L. Ed. 2d 1344, 79 S.Ct. 1257 (1959). Furthermore, where a state supreme court reaches and decides a constitutional issue, the issue can be considered by the United States Supreme Court whether or not the issue was raised by the Petitioner during the state appeal, see, Jennings v. Georgia, 418 US 153, 41 L. Ed. 2d 642, 94 S.Ct. 2750 (1974). As noted above, the dissenting opinion of Pennsylvania Supreme Court Justice Papadakos is clear evidence that the Pennsylvania Supreme court did pass on the issue as to whether the word "prompt" gave sufficient notice, i.e. whether the word "prompt" is vague. This Honorable Court should take the opportunity at this time to instruct the Courts and Legislatures of the States and Territories of the United States that a statute must give a definite length of time to assert a right and that the word "prompt", without definition will not satisfy due process.

III.
THE DECISIONS BY THE COURTS OF PENNSYLVANIA WERE NOT PROPER

As set out in Petitioners' Writ for Certiorari, the actions by the courts of Pennsylvania were not proper and did not comport with the United States Constitution. Supreme Court of Pennsylvania Supreme Court Justice Papadakos pointed out in his dissenting opinion that the word "prompt" was not defined. This is a prime example of a vague on it face statute as defined in Connally v. General Construction Co., 269 U.S. 385, 391, 46 S.Ct. 126, 127, 70 L.Ed 322 (1926).

Is "prompt" ten days? twenty days? thirty day? one-hundred days? Who knows? The word "prompt" has not been defined by either the Courts or Legislature of Pennsylvania. Obviously the Petitioners' due process rights have been violated and this Honorable Court should correct the blatant mistakes of the Courts of Pennsylvania.

Furthermore, 42. Pa. C.S.A. §5103(b), the Pennsylvania Transfer Statue, would never make reference to the 42 Pa. C.S.A. §5535(a)(2)(i), unless the legislature of Pennsylvania intended for a party to have one year to transfer an action from federal court to state court. The Respondent, Hospital's position that the two statutes are independent of each other is not practical. Why else would 42 Pa. C.S.A. §5103(b), specifically mention 42 Pa.C.S.A. § 5535, unless the one year time limit was to apply? For this reason the Respondent's position is completely without merit.

CONCLUSION

For the reasons stated in this Reply brief and the Petition for Writ of Certiorari this Honorable Court should grant the Petition so that the States and Territories of this Unites States will be on notice that it is improper for a court to change a statute and then to give no guidance as to what their change means when such change creates an unconstitutionally vague statute. This court should reinstate the Petitioners' cause of action.

Respectfully submitted,

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APPENDIX

APPENDIX - A

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CIVIL DOCKET SHEET CASE NO. 88-967

PLAINTIFF DEFENDANT

COLLINS GREENE COUNTY MEMORIAL HOSPITAL

DATE	NR	PROCEEDINGS
1988		
Apr. 29	1	COMPLAINT / w Jury demand and summons issued

* * *

APPENDIX - B

TITLE OF ARGUMENT II OF PETITIONERS' PENNSYLVANIA SUPERIOR COURT BRIEF

BECAUSE A COURT HAS NO POWER TO INSERT A WORD INTO A STATUTORY PROVISION WHERE THE LEGISLATURE HAS FAILED TO SUPPLY IT, IT WAS ERROR FOR THE TRIAL COURT TO READ THE WORD "PROMPT" INTO 42 PA. C.S.A. §5103(b)"

TITLE OF ARGUMENT II OF PETITIONERS' PENNSYLVANIA SUPREME COURT BRIEF

"BECAUSE A COURT HAS NO POWER TO INSERT A WORD INTO A STATUTORY PROVISION WHERE THE LEGISLATURE HAS FAILED TO SUPPLY IT, IT WAS ERROR FOR THE TRIAL COURT TO READ THE WORD "PROMPT" INTO 42 PA. C.S.A. §5103(b) AND FOR THE SUPERIOR COURT TO AFFIRM THE TRIAL COURT DISMISSAL OF THE APPELLANTS CLAIM"

APPENDIX C

TITLE OF ARGUMENT II, PETITIONERS' REPLY BRIEF IN THE SUPREME COURT OF PENNSYLVANIA

Even if this Court finds that Appellants claim was terminated when dismissed from Federal Court, Appellants had one year within which to affect a transfer pursuant to the terms of 42 Pa.C.S.A. §5103(b)(2) and §5535(a).

PARAGRAPHS TWO AND THREE OF PETITIONERS' APPLICATIONS FOR REARGUMENT IN THE SUPREME COURT OF PENNSYLVANIA

2. The Court's opinion refers to the word "prompt" and affirms the lower Court's opinion setting forth this word as part of the statutes involved in this case. The word does not appear in any of the statutes.

3. The Court, due to press of business, apparently did not have the opportunity to read the statutes involved. These statutes clearly sustain the Petitioners' position, that they had one year to file their action following dismissal from Federal Court.